

Below is an opinion of the court.



PETER C. MCKITTRICK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|---------------------|
| In Re: |) | |
| |) | Bankruptcy Case No. |
| ROBERTO ESCATEL OROZCO and |) | 19-60726-pcm13 |
| MELINDA MARIA OROZCO, |) | |
| |) | |
| Debtors. |) | |
| _____ |) | |
| In re: |) | Bankruptcy Case No. |
| |) | 19-61230-pcm13 |
| |) | |
| HECTOR RAMON GARCIA FIGUEROA, |) | |
| |) | OPINION |
| Debtor. |) | |
| _____ |) | |

This matter comes before the court on the trustee's objection to confirmation of debtors' chapter 13¹ plan.² The issue is whether chapter 13 debtors must pay any tax refunds received during the plan period to the trustee. I conclude that tax refunds must be accounted for in

¹ All references to chapters and sections are to the Bankruptcy Code, 11 U.S.C. § 101 et seq.

² The trustee objected to plans in four other chapter 13 cases that raise the same issue. This Opinion will govern the outcome of those cases, and I will not write separately on them.

1 determining projected disposable income. For the reasons below, I
2 further conclude that a debtor's tax refunds must be turned over to the
3 trustee unless they are excluded by a non-standard provision in the plan,
4 or the debtor has met his or her burden of showing that the refunds are
5 otherwise accounted for in calculating projected disposable income.

6 JURISDICTION AND VENUE

7 The court has subject matter jurisdiction over these cases pursuant
8 to 28 U.S.C. § 1334(a). These matters are core proceedings under 28
9 U.S.C. § 157(b)(2)(A), (E), & (L). Venue in this district is proper
10 pursuant to 28 U.S.C. §§ 1408-09(a).

11 BACKGROUND

12 Chapter 13 allows debtors to restructure their debts and retain non-
13 exempt assets, in exchange for making payments over a certain period of
14 time. Distribution of those payments is made by the chapter 13 trustee
15 in accordance with a chapter 13 plan.

16 For a chapter 13 plan to be confirmed, it must comply with the
17 Bankruptcy Code. § 1325(a)(1). One of the requirements under the Code
18 is that debtors commit all or a portion of their future earnings or other
19 future income "to the supervision and control of the trustee as is
20 necessary for the execution of the plan[.]" § 1322(a)(1). If there is
21 an objection to confirmation of a plan, debtors must either pay their
22 unsecured creditors in full, or pay all of their "projected disposable
23 income" to unsecured creditors during the applicable commitment period.
24 § 1325(b)(1).

25 In the District of Oregon, debtors are required to use a local form
26 chapter 13 plan. The local plan requires debtors to pay to the trustee

1 monthly payments, proceeds from avoided transfers, and net tax refunds
2 during the life of the plan.

3 Paragraph 3(c) of that form plan provides:

4 **3. Payments to the Trustee.** Debtor must pay to the trustee:

5 (a) a monthly payment of \$ _____;

6 (b) all non-exempt proceeds from avoided transfers, including
7 those from transfers avoided by the trustee;

8 (c) upon receipt, net tax refunds attributable to the following
9 tax years: _____; net tax refunds are those tax refunds not
10 otherwise provided for in the plan, less tax paid by debtor for a
11 deficiency shown on any tax return for that same tax year or tax
12 paid by setoff by a tax agency for a postpetition tax year.

13 Debtors in these cases inserted the word "none" in paragraph 3(c).

14 The trustee objects to confirmation of debtors' plans on the grounds
15 that debtors have failed to provide for payment of all of their projected
16 disposable income, because they have failed to provide for payment of
17 their tax refunds into their plans.

18 ANALYSIS

19 A. Calculation of Disposable Income

20 The disputes in these cases arise from ambiguities created by
21 amendments to the Bankruptcy Code in the 2005 Bankruptcy Abuse Prevention
22 and Consumer Protection Act ("BAPCPA"). Among the many changes made to
23 the Code in 2005 was the implementation of a "means test." The means
24 test serves at least two vital functions in bankruptcy cases filed after
25 October 17, 2005.

26 First, it is used to determine whether a debtor is eligible to file
a chapter 7 case. If a debtor's "current monthly income," as defined by
the Code, is below the applicable state median family income for a family

1 the size of the debtor's household ("below-median debtor"), the debtor is
2 eligible to file chapter 7. § 707(b)(7). If the current monthly income
3 is above that threshold ("above-median debtor") and, after deducting
4 certain specified expenses, the debtor has net income that exceeds a
5 statutory limit, the chapter 7 filing is presumed to be an abuse of the
6 Bankruptcy Code, because the debtor's income and expenses allow the
7 debtor to make some payment to unsecured creditors. See § 707(b)(2).
8 The debtor can convert the case to one under chapter 11 or chapter 13, or
9 attempt to rebut the presumption of abuse to stay in chapter 7.
10 §§ 707(b)(1); 707(b)(2)(B).

11 Second, and relevant to this decision, the means test is imported
12 into Chapter 13. See § 1325(b)(2), (3). Before BAPCPA, the amount
13 available to pay to the trustee in a chapter 13 plan (the debtor's
14 disposable income) was determined by the debtor's Schedule I (Income) and
15 Schedule J (Expenses). The last line of Schedule J deducts the debtor's
16 Schedule J expenses from the Schedule I net income and arrives at a
17 monthly net income. That monthly net income formed the basis for how
18 much the debtor's monthly plan payment would be.

19 BAPCPA and the creation of the means test changed the equation.
20 Congress imported the definition of current monthly income from the means
21 test for two purposes in chapter 13. First, current monthly income
22 determines how long a chapter 13 debtor's plan must last. For a below-
23 median debtor, a chapter 13 plan must last a minimum of three years, the
24 "applicable commitment period." § 1322(d)(2). For an above-median
25 debtor, a chapter 13 plan must last five years, or until all allowed
26 claims are paid in full. § 1322(d)(1).

1 Second, BAPCPA uses "current monthly income" as the starting point
2 for determining disposable income in a chapter 13 case. Current monthly
3 income is defined as the average monthly income from all sources (with a
4 few listed exceptions such as Social Security) received by the debtor in
5 the six months before bankruptcy. § 101(10A). Debtors report current
6 monthly income on Official Form 122C-1.

7 Disposable income, in turn, is defined as current monthly income
8 "less amounts reasonably necessary to be expended" for the maintenance or
9 support of the debtor or the debtor's dependents. § 1325(b)(2). For
10 above-median debtors, Congress went further and dictated that reasonably
11 necessary expense amounts deducted from current monthly income to arrive
12 at disposable income be calculated using the expenses set out in the
13 means test, using Official Form 122C-2. See § 1325(b)(3). These
14 expenses are based in large part on standardized Internal Revenue Service
15 amounts, plus certain other specified expenses. § 707(b)(2)(A). The end
16 result of deducting these specified expenses from current monthly income
17 is the debtor's disposable monthly income, which lays the foundation for
18 the debtor's monthly plan payment and the amount that must be paid to
19 unsecured creditors.

20 For below-median debtors, the Code does not provide any guidance as
21 to the calculation or definition of "amounts reasonably necessary to be
22 expended," which are deducted from current monthly income to determine
23 disposable income. This creates uncertainty as to how disposable income
24 is calculated for below-median debtors. Debtors and the trustee disagree
25 on the proper method to determine amounts reasonably necessary to be
26 expended in a below-median case.

1 Debtors argue that calculation of disposable income for below-median
2 debtors is the same as the calculation used for above-median debtors. In
3 other words, they argue that they can calculate their disposable income,
4 and therefore their projected disposable income, by using the current
5 monthly income shown on Form 122C-1, and calculate their expenses using
6 Form 122C-2, which applies the IRS standards and other specified expenses
7 to determine a debtor's reasonably necessary expenses. They base their
8 argument on the language contained in § 1325(b)(2).

9 Debtors are correct that the statutory language is the same for both
10 above- and below-median debtors, to a point. The statute simply states
11 that a debtor determines disposable income by deducting amounts
12 reasonably necessary to be expended "for the maintenance or support of
13 the debtor or a dependent of the debtor[.]" § 1325(b)(2). This
14 paragraph of § 1325(b) does not distinguish between above- and below-
15 median debtors. However, that is where the symmetry ends. The next
16 paragraph, section 1325(b)(3), does make that distinction. It
17 specifically instructs above-median debtors to follow the means test
18 formula to calculate the "[a]mounts reasonably necessary to be expended
19 under paragraph (2)[.]" This is done by using Official Form 122C-2. In
20 contrast, the Code does not direct below-median debtors to use the means
21 test to calculate reasonably necessary expenses.

22 Debtors argue that this statutory distinction should be ignored and
23 the amount deducted from current monthly income for a below-median
24 debtor's expenses should be the same standardized approach as for above-
25 median debtors, namely the mechanical approach taken using Form 122C-2.
26 The trustee argues that the means test is not relevant to calculating the

1 amount of expenses used in determining disposable monthly income for
2 below-median debtors.

3 I agree with the trustee. Congress's silence with respect to how
4 below-median debtors must determine their reasonably necessary expenses
5 is deafening. See Hamilton v. Lanning, 560 U.S. 506, 517 (2010) (the
6 Court does not read the Code as changing pre-BAPCPA practice absent a
7 clear indication of that intent). The plain reading of the statute
8 supports the trustee's argument. Congress, for whatever reason, chose to
9 approach the calculation of disposable income for above-median debtors
10 with a somewhat mechanical approach, applying IRS standards for many of
11 the debtor's expenses. Similarly, Congress chose to leave below-median
12 debtors out of this mechanical, somewhat artificial approach to
13 determining expenses. Rather, as before the enactment of BAPCPA, the
14 statute instructs debtors to deduct amounts reasonably necessary to be
15 expended for maintenance and support. The Supreme Court in Lanning, 560
16 U.S. at 510, recognized that, for below-median debtors, Congress provided
17 that they could include "the full amount needed for 'maintenance or
18 support[.]'" For above-median debtors, however, Congress provided that
19 they could include "only certain specified expenses." *Id.*³ In other
20 words, the expenses are not standardized or artificial for below-median
21 debtors; the deductions must be *reasonably necessary* and *expended*. The
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23 ³ The Supreme Court in Lanning seemed to think that the standardized
24 expenses used by above-median debtors are more limiting than a below-
25 median debtor's "full amount" needed for support. 560 U.S. at 510. As
26 debtors have ably demonstrated here, and as this court's experience has
shown, the standardized expenses allowed under the means test for above-
median debtors often far exceed the reasonable and necessary expenses
that a below-median debtor can claim.

1 best indication of expenses that are reasonably necessary and anticipated
2 to be expended is Schedule J.

3 Debtors' argument that the court should not distinguish between
4 above- and below-median debtors as to how deductions from current monthly
5 income are calculated is pivotal to their position that below-median
6 debtors need not turn over their tax refunds. They postulate that, if
7 the formula for determining the deductions from current monthly income
8 used for above-median debtors set out in Form 122C-2 were used for below-
9 median debtors, the end result of calculating the debtor's disposable
10 income would be a negative number, even with the addition of anticipated
11 tax refunds. Debtors then argue that, because disposable income will
12 virtually always be negative, there is no obligation to turn over the
13 refunds.

14 Debtors are probably correct about the impact of using the means
15 test to calculate expenses. Unless a debtor is close to having above-
16 median income, the addition of tax refunds will not create a positive
17 disposable income if a below-median debtor were to use the formulas
18 contained in Form 122C-2. The reason for this is that most low-income
19 debtors live on budgets well below the IRS standards. They also tend to
20 have less in secured debt payments than do above-median debtors. Thus,
21 their expenses shown on Schedule J are lower than they would be under the
22 means test calculation set out in Form 122C-2. The end result is that
23 below-median debtors may, in fact, show a positive number for disposable
24 income when an above-median debtor would likely have a negative
25 disposable income number, despite having a higher income. I acknowledge
26 the inherent inequity in this distinction, but the result is mandated by

1 the language of the Code, which I am not at liberty to ignore.

2 B. Calculation of Projected Disposable Income

3 Projected disposable income starts with disposable income,
4 determined by taking current monthly income and reducing it by the
5 debtor's reasonably necessary expenses. Disposable income is then
6 projected over the life of the plan.

7 The question then is how to project disposable income looking
8 forward during the plan period. Although the Code does not define
9 "projected" disposable income, the Supreme Court in Lanning, 560 U.S.
10 505, provided guidance as to the interplay between disposable income and
11 projected disposable income, confirming that there is a difference
12 between the two. Lanning involved an above-median debtor. The Court
13 rejected a mechanical approach to projecting disposable income. It said
14 that, under the forward-looking approach to projecting disposable income,
15 the calculation of disposable income is generally the end of the
16 analysis. Because projected disposable income is forward-looking, that
17 number can vary from disposable income if there are differences in income
18 or expenses that are known or virtually certain to occur in the future
19 during the period of the plan. Id. at 524.

20 Lanning's rejection of a purely mechanical approach to determining
21 projected disposable monthly income makes sense. Because the calculation
22 of disposable monthly income is based on an historical calculation of
23 income, it may not comport with reality. For example, if a debtor
24 becomes employed or gets new employment at a substantially higher income
25 level just before the bankruptcy is filed, the current monthly income
26 shown on Form 122C-1 may be lower than it is known or virtually certain

1 to be going forward. Similarly, the debtor may have received unusual or
2 non-recurring income during the six-month look-back period, such as a
3 bonus during the six-month period preceding the filing. In that
4 instance, the current monthly income may too high and result in a plan
5 payment that is not sustainable.

6 Therefore, projected disposable income is the debtor's current
7 monthly income, minus anticipated tax liabilities and other reasonably
8 necessary amounts to be expended for maintenance and support (whether
9 calculated by above-median debtors using the means test or by below-
10 median debtors not using the means test), with any adjustments as
11 necessary based on known or virtually certain deviations with respect to
12 income or expenses.

13 C. Tax Refunds as Income

14 For all debtors, the income portion of disposable monthly income is
15 the current monthly income shown on their Official Form 122C-1, which
16 requires the debtor to include his or her income from all sources
17 received over the previous six months to calculate an average monthly
18 income.⁴ Although there are certain exclusions from the "all sources"
19 definition, tax refunds are not one of those exclusions. See Marshall v.
20 Blake, 885 F.3d 1065 (7th Cir. 2018) (overruled on other grounds In re
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22 ⁴ The trustee argues that his practice for below-median debtors "is to
23 use the actual income (per Schedule I), and not the 'current monthly
24 income,' (per Form 122C-1)" in computing the monthly disposable income
25 for the plan payment. Trustee's Reply Memorandum (Doc. 24) at p.6:14-17.
26 Although I recognize the practicality of that approach, it is an
allowable approach only if it is consistent with starting with the
current monthly income as defined by the Bankruptcy Code, adjusted as
necessary pursuant to Lanning.

1 Wade, 926 F.3d 447 (7th Cir. 2019); In re Schiffman, 338 B.R. 422 (Bankr.
2 D. Or. 2006) (tax refunds are income).⁵

3 Tax refunds come from two sources. First, they can result from
4 over-withholding of payroll tax. Second, they can result from tax
5 credits such as the Earned Income Credit (EIC), Child Tax Credit (CTC),
6 or other tax credits that are available to low-income workers and result
7 in tax refunds.⁶

8 Tax refunds resulting from over-withholding are not additional
9 income; they are a portion of the debtor's gross pay, which has been
10 reported on Form 122C-1. A portion of that gross pay is returned to the
11 debtor who has withheld more in taxes than is actually owed. It does not
12 matter whether the refund is received in the six months before
13 bankruptcy; the gross pay that is reflected on the Form 122C-1 is all
14 that is required in calculating current monthly income.

15 Refunds that are based on tax credits, on the other hand, are not
16 derived from a debtor's work income, and so do not show up as part of the
17 gross pay on the Form 122C-1. Because they are a source of income that
18 is not excluded from the definition of current monthly income in
19 § 101(10A), they must somehow be included in the calculation of current
20 monthly income, if received in the six months before bankruptcy.

22 ⁵ I question the public policy behind including tax credits, such as
23 earned income credit, in income. However, the statutory language clearly
24 excludes certain types of income such as social security but fails to
exclude tax credits such as earned income credit.

25 ⁶ The CTC is not paid out as a tax refund. It is credited against tax
26 liability. Additional Child Tax Credit (ACTC) may result in a tax
refund.

1 D. Treatment of Tax Refunds in Chapter 13 Plans

2 Tax refunds must be factored into the calculation of projected
3 disposable income, whether a result of tax credits or of over-
4 withholding. If refunds are not included in projected disposable income
5 and the debtor does not provide for payment of the refund into the plan,
6 the court cannot confirm the plan over the trustee's objection.

7 The question is how tax refunds should be accounted for in
8 calculating a chapter 13 debtor's projected disposable income. The
9 answer depends on whether the tax refunds are a result of over-
10 withholding or are tax credit refunds.

11 1. Tax Refunds Resulting from Over-Withholding

12 A debtor's current monthly income is reported on Form 122C-1. This
13 form asks on Line 2 for a debtor's "gross wages, salary, tips, bonuses,
14 overtime, and commissions (before all payroll deductions)." This amount
15 should reflect the debtor's gross pay before taxes are withheld.

16 The problem comes in accurately calculating tax liability as an
17 expense to deduct from gross pay in determining disposable income. Form
18 122C-1 sets out gross pay, which reflects only the income side of
19 disposable income. There is no line item on Form 122C-1 to reduce gross
20 pay by the amount of tax withholding. Because above- and below-median
21 debtors calculate their disposable income differently, I will address the
22 two categories separately.

23 (a) Below-median debtors

24 For below-median debtors, the expenses used to reduce their current
25 monthly income to determine disposable income are generally set out in
26 Schedule J. That schedule, however, does not include a line item for tax

1 withholding. Payroll deductions, including tax withholding, are reported
2 on Schedule I.

3 Therefore, in calculating disposable income, below-median debtors
4 must take their current monthly income from Form 122C-1 and reduce it by
5 the tax withholding shown in Schedule I and their other reasonably
6 necessary expenses shown in Schedule J.

7 The practical issue is that withholding reported on Schedule I can
8 be actual withholding or it can be withholding calculated based on actual
9 tax liability, which are not necessarily the same thing.

10 If a debtor uses actual tax withholding as an expense to reduce her
11 gross income, and that withholding has in the past and is likely in the
12 future to result in a tax refund because it is more than is needed to pay
13 actual tax liability, reducing gross income by that figure will
14 artificially inflate the reasonably necessary expense deduction and
15 consequently artificially reduce the reported disposable income. In that
16 case, any tax refund would then be income that has not been included in
17 calculating disposable income, and the debtor would need to provide for
18 payment of tax refunds into the plan.

19 The correct approach is for a debtor to report tax withholding on
20 Schedule I based on actual anticipated tax liability. This results in an
21 accurate expense calculation of the debtor's reasonably necessary
22 expenses and accurately determines disposable income for purposes of
23 calculating the amount of a plan payment. Because the disposable income
24 calculation takes into account actual tax liability, any tax refund based
25 on over-withholding has been accounted for and need not be paid to the
26 trustee during the life of the plan.

1 In summary, a debtor's plan payment should be calculated based on
2 the debtor's best estimate of actual tax liability, reflected in Schedule
3 I. A plan that accurately reflects anticipated tax liability on Schedule
4 I as an expense need not provide for payment to the trustee of tax
5 refunds based on over-withholding, because no such refunds are expected.
6 If the debtor is over-withholding and instead reports on Schedule I
7 actual tax withholding, which is known or virtually certain to result in
8 a tax refund, and then deducts that actual over-withholding in
9 calculating reasonably necessary expenses, the debtor will need to
10 provide for payment of the tax refund into the plan, because the debtor's
11 income has been artificially reduced by over-withholding. Of course, the
12 debtor can always include a non-standard provision allowing her to retain
13 any tax refund, with the consent of the trustee.⁷

14 (b) Above-median debtors

15 Unlike below-median debtors, who must look to Schedules I and J to
16 calculate their reasonably necessary expenses, above-median debtors use
17 the means test to determine expenses used to calculate their disposable
18 income. Means test expenses are reported using Form 122C-2.

19 Form 122C-2 expressly includes a line item for taxes. In Line 16 of
20 the form, debtors are instructed to report taxes:

21 The total monthly amount that you actually pay for federal, state
22 and local taxes, such as income taxes, self-employment taxes, social
23 security taxes, and Medicare taxes. You may include the monthly
24 amount withheld from your pay for these taxes. However, if you
25 expect to receive a tax refund, you must divide the expected refund
26 by 12 and subtract that number from the total monthly amount that is
withheld to pay for taxes. Do not include real estate, sale, or use
taxes. (Emphasis supplied.)

⁷ In fact, the national Chapter 13 Plan form specifically includes a
check box to allow debtors to retain tax refunds.

1 This calculation provides the mechanism by which a debtor accounts
2 for the income that is reflected in tax refunds resulting from over-
3 withholding. If a debtor correctly completes this line item, the tax
4 refunds based on over-withholding are accounted for in the plan and need
5 not be paid to the trustee. Of course, if a debtor fails to account for
6 refunds caused by over-withholding, the plan must provide that those
7 refunds be paid into the plan.

8 2. Tax Refunds Based on Tax Credits

9 Tax credit refunds are income in addition to income from wages or
10 salary. Form 122C-1 does not include a line specifically for tax credit
11 refunds. Therefore, a debtor must include tax credit refunds that were
12 received within six months before bankruptcy on Form 122C-1 in Line 10,
13 which asks for "[i]ncome from all other sources not listed above." If
14 the refund was not received within the six-month look-back period, it is
15 not required to be included in the Form 122C-1 current monthly income
16 calculation.

17 If the debtor did not receive a refund within the six-month look-
18 back period, but it is known or virtually certain that the debtor will
19 receive tax credit refunds during the life of the plan, a reasonable
20 estimate of the amount of anticipated tax credit refunds must be included
21 as income on Schedule I and used to project disposable income over the
22 life of the plan. For debtors who did receive their refund within the
23 six months before bankruptcy, the full amount of the refund was pro-rated
24 over six months to calculate current monthly income. Any known or
25 virtually certain future tax credit refunds will need to be pro-rated
26 over the full calendar year. All debtors can make that adjustment on

1 their Schedule I to show that an adjustment to current monthly income is
2 necessary because of future differences that are known or virtually
3 certain to occur.

4 Realistically, it is unlikely that including the pro-rated amount of
5 the refunds will increase a debtor's plan payment, at least for below-
6 median debtors. Along with the increased net income, the below-median
7 debtor will be able to claim reasonable expenses on Schedule J. The
8 reality is that most of the refunds received by below-median debtors are
9 tax credits such as the EIC. These debtors typically live on very tight
10 budgets, with little or no room for error and well below the IRS
11 standards. It will not be difficult or unreasonable in most cases to
12 show expenses that absorb any additional income listed on Schedule I from
13 tax refunds.

14 If a debtor accurately reports refunds based on tax credits on
15 Schedule I, she need not provide for payment of those refunds in the
16 plan, because they have already been accounted for in determining
17 projected disposable income.

18 In summary, debtors have three choices of how to treat tax refunds
19 based on tax credits. First, the correct approach is to include any
20 refunds based on tax credits on Form 122C-1, Line 10, if those refunds
21 were received in the six months before bankruptcy, or on Schedule I if a
22 refund was not received in the six months leading up to bankruptcy but it
23 is known or virtually certain that the debtor will receive tax credit
24 refunds during the life of the plan. If that is done, the debtor need
25 not pay tax credit refunds into the plan.

26 Second, if the debtor fails to account for those refunds on Form

1 122C-1 or Schedule I, and it is known or virtually certain that the
2 debtor will receive tax credit refunds during the life of the plan, the
3 debtor must provide for payment of the refunds into the plan in order to
4 obtain confirmation over the trustee's objection.

5 Third, debtors may, with the trustee's agreement, include a non-
6 standard provision that they may retain all or part of the refunds
7 received.⁸

8 CONCLUSION

9 If the trustee objects to confirmation of a debtor's chapter 13
10 plan, the debtor must pay his or her projected disposable income to the
11 trustee for payment to unsecured creditors. Tax credit refunds are
12 included in projected disposable income. Deductions from income for tax
13 withholding must accurately reflect actual tax liability. Absent a
14 showing that refunds have been adequately accounted for in calculating
15 projected disposable income, and in the absence of a plan provision
16 requiring payment of refunds over to the trustee, a plan cannot be
17 confirmed over the trustee's objection.

18 It is true that debtors may receive tax refunds during the life of
19 their plans that are in excess of projected amounts, whether a result of
20 over-withholding or of tax credits. However, a debtor's obligation under
21 the Code is to commit his or her projected disposable income to the plan.
22 Income may vary, as may expenses. If the projection is reasonable, the
23 fact that actual refunds vary from the amounts projected does not
24 necessarily mean that the refunds must be paid into the plan.

25 ⁸ The chapter 13 trustee in the Portland Division has a form non-
26 standard provision he allows debtors to include in their plans that
allows them to retain EIC refunds without further analysis.

1 Debtors have failed to show that they adequately accounted for their
2 tax refunds, nor have they provided that the refunds will be turned over
3 to the trustee. Therefore, they have failed to meet their burden to show
4 that their anticipated tax refunds are already included in projected
5 disposable income, and the plan in each case cannot be confirmed.

6 The court will enter an order denying confirmation in both cases and
7 providing debtors 28 days to file an amended plan.

8 ###

9 cc: Rex Daines
10 Paul Garrick
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